## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION

No. 7:04-CR-00045-F-1
No. 7:14-CV-00247-F

NORWOOD P. PEARSALL,
Petitioner,

v.
ORDER

UNITED STATES OF AMERICA,
Respondent.

This matter is before the court on Norwood P. Pearsall's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-41]. The Government has filed a Response [DE-48] to the pending section 2255 motion. The matter is now ripe for disposition.

In his section 2255 motion, Pearsall argues that in light of *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011), he did not have any felony convictions at the time he possessed the firearm for which he is charged. Pearsall concludes that he is actually innocent of being a felon in possession of a firearm. In its Response, the Government agrees that pursuant to *Simmons*, Pearsall had not sustained a conviction for an offense punishable by imprisonment for a term exceeding one year at the time of the instant offense. Further, the Government agrees to waive any defense based on the statute of limitations, 28 U.S.C. § 2255(f), and asks the court to vacate Pearsall's § 922(g)(1) conviction.

In light of the record in this case, including the Government's concessions, Pearsall's section 2255 motion [DE-41] is ALLOWED. The February 23, 2005 Judgment [DE-23] of conviction and sentence hereby is VACATED. The requisite showing to support a certificate of

appealability has not been made. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This, the  $\underline{9}^{\prime\prime}$  day of December, 2014.

JAMES C. FOX
Senior United States District Judge